



201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45321-2024 (O&M)
Date of decision: 17.09.2024

Saurabh

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Pooja Jaglan, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 of Cr.P.C. seeking regular bail in case bearing FIR No.469 dated 28.10.2023 under Sections 363/366/376(2)(n) of IPC and Section 6 of POCSO Act added later on (Sections 328/376-D/343/506/120-B of IPC deleted) registered at Tehsil Camp, Panipat.

The FIR (*supra*) was lodged on the statement of the complainant by alleging that she is working as a house maid and on 13.09.2023 at about 04:00 P.M., when she went for work in other houses and her younger daughter went to tuition, her victim/daughter was alone in the house and when at about 04:30 P.M., her younger daughter came back to home, she found that the house was locked and she informed the complainant that victim/daughter was not present at home. The complainant tried to search her everywhere but could not trace her. After some time, her neighbour told her that the victim went for taking some medicines. It is further alleged that when the complainant entered the house, she found that the almirah was opened and cash of Rs.15,000/-,



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golden ring, locket, earrings and one silver anklet were missing. On 29.09.2023, she came to know that her daughter was at the house of the accused/petitioner and when she went to the house of the accused/petitioner, she found her daughter/victim there and as she was scared, she kept at Shelter Home and after two days, the victim was sent to her parents. Thereafter, the victim disclosed that the accused/petitioner enticed her away on the pretext of marriage and he took her to Haridwar and thereafter, to Delhi and kept her in a room and committed wrong act upon her by administering stupefying substance and thus, the instant FIR got registered.

Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and initially, the FIR No.351 dated 26.08.2023 was registered on the complaint made by the father of the prosecutrix. The perusal of FIR No.351 (Annexure P-3) would indicate that the complainant has alleged that on 25.08.2023, the prosecutrix has left her home and has not returned back, as such, on the next date, the FIR No.351 was registered. In the aforesaid FIR, on 27.06.2023, the prosecutrix was produced before the jurisdictional Magistrate and her statement was recorded under Section 164 Cr.P.C. (Annexure P-4), wherein, she has stated that on 25.08.2023, she had a fight with her mother and out of anger and with her own free will, she left her house and went to her friend's house in Babail village. The jurisdictional police authorities have concluded the investigation in the said FIR and presented the cancellation report which is available on record as Annexure P-7 and surprisingly, on the same set of allegations, with regard to the same incident, the FIR (*supra*) has been registered on 28.10.2023 by the complainant, in which she has alleged that the petitioner along with three other persons, have



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sexually exploited her daughter/victim. The case set up by the prosecutrix was thoroughly investigated and three of the co-accused have been declared innocent. The evidence against the petitioner is the same as against the three co-accused who have been declared innocent and this alone itself completely suffocates the case set up by the prosecution. She further submits that the petitioner is behind the bars since 18.01.2024 and he is not involved in any other case. Further, it would be a moot point to be decided by the learned trial Court whether the prosecutrix was minor at the time of incident or not.

The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that there are serious and specific allegations against the petitioner and he is the main accused, however, she could not controvert the fact that with regard to the same incident, earlier FIR No.351 was registered in which cancellation report has been submitted by the Investigating Agency.

A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. CBI**' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used

sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars for 07 months and 29 days as on 16.09.2024. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as only 01 out of 17 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Saurabh is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

17.09.2024
Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No